

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICTOR RENARD CYRUS, JR,	)	
	)	
Petitioner,	)	No C 05-4975 VRW (PR)
	)	
vs.	)	ORDER OF DISMISSAL
	)	
SCOTT KERNAN, Warden,	)	
	)	
Respondent.	)	
_____	)	

Per order filed on May 10, 2007, the court found that two of petitioner's six habeas claims are not exhausted under 28 USC § 2254. The court explained that under the law of the circuit, petitioner must elect to withdraw his unexhausted claims and proceed only on his exhausted claims, or dismiss the entire mixed petition and return to federal court with a new petition once all claims are exhausted. May 10, 2007 Order at 2 (citing Jefferson v Budge, 419 F3d 1013, 1016 (9th Cir 2005); Olvera v Giurbino, 371 F3d 569, 573 (9th Cir 2004)).<sup>1</sup>

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<sup>1</sup>The court also noted that petitioner may be able to seek a stay of these proceedings if he can show that there was good cause for his failure to exhaust

1           Petitioner has filed a timely response to the court's order in which he  
2 states: "Petitioner will move to dismiss the entire petition and return to federal  
3 court with a new petition once all claims are exhausted." Pursuant to petitioner's  
4 election, the petition is DISMISSED without prejudice to filing a new federal  
5 petition containing only exhausted claims.

6           The clerk shall enter judgment in accordance with this order, terminate all  
7 pending motions as moot, and close the file.

8           SO ORDERED.



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11 VAUGHN R WALKER  
12 United States District Chief Judge  
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26 his unexhausted claims in state court, and that the claims are potentially  
27 meritorious. May 10, 2007 Order at 2 n1 (citing Rhines v Webber, 125 S Ct  
28 1528, 1535 (2005)).